

Brian S. Hermann (*pro hac vice* pending)
William A. Clareman (*pro hac vice* pending)
Alexander Woolverton (*pro hac vice* pending)
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Tel.: (212) 373-3000
bhermann@paulweiss.com
wclareman@paulweiss.com
awoolverton@paulweiss.com

Stephen A. Metz (VA Bar No. 89738)
OFFIT KURMAN, P.A.
7501 Wisconsin Avenue, Suite 1000W
Bethesda, Maryland 20814
Tel.: (240) 507-1723
smetz@offitkurman.com

Joyce A. Kuhns (*pro hac vice* pending)
OFFIT KURMAN, P.A.
300 East Lombard Street, Suite 2010
Baltimore, Maryland 21202
Tel: (410) 209-6463
jkuhns@offitkurman.com

*Co-Counsel to Simon Property Group, Inc.
and Its Affiliates*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

RETAIL GROUP, INC., *et al.*

Debtors.¹

Chapter 11

Case No. 20-33113 (KRH)

(Jointly Administered)

**SIMON PROPERTY GROUP, INC.'S (I) OBJECTION
TO CONFIRMATION OF THE AMENDED JOINT CHAPTER 11
PLAN OF REORGANIZATION OF ASCENA RETAIL GROUP, INC.
AND ITS DEBTOR AFFILIATES AND (II) RESERVATION OF RIGHTS**

Simon Property Group, Inc. ("Simon"), by and on behalf of itself and its affiliated entities (collectively the "Simon Landlords") that are the landlords with respect to the properties identified herein, by its undersigned counsel, files this (i) objection to the *Amended Joint Chapter*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <http://cases.primeclerk.com/ascena>. The location of Debtor Ascena Retail Group, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 933 MacArthur Boulevard, Mahwah, New Jersey 07430.

11 Plan of Reorganization of Ascena Retail Group, Inc. and its Debtor Affiliates [Docket No. 1403] (as amended, modified, or supplemented from time to time, the “Plan”)² and (ii) reservation of rights (this “Objection”), and respectfully states as follows:

PRELIMINARY STATEMENT

1. When this Court approved the sale of the Debtors’ Lane Bryant and premium business segment, the Court aptly observed that “when you look at it from a 15,000 foot view, this is a pretty marvelous transaction,” and further commented that “the going concern aspects of this are just huge.” *In re Ascena Retail Grp., Inc.*, et al., Hr’g Tr. at 38:19–21 (Bankr. E.D. Va. Dec. 8, 2020). Through the sale, the Purchaser promised to “tak[e] at least 900 stores as part of this process, preserving the business, [and] thousands of jobs,” *id.* at 7:17–19, leaving for a later day the determination and process for assumption and assignment of specific store leases.

2. Since then the Purchaser has laid bare its intention to significantly reduce the business’ physical store presence in the near term. The result will be a significantly less creditworthy lessee than the entity with which the Simon Landlords originally contracted. The Purchaser’s significantly reduced store footprint and mix of remaining stores not only will diminish the profitability of its brick-and-mortar business, but also will hurt its e-commerce business, as a strong physical presence drives e-commerce sales and profitability as well. The Simon Landlords’ concern is supported by a depth of experience as the largest shopping center operator in the United States, as well as its own experience owning and operating retailers across the United States, including iconic retailers like J.C. Penney, Brooks Brothers, Lucky Brand, Forever 21, and Aéropostale.

² Capitalized terms not otherwise defined herein shall have the same meanings ascribed to those terms in the Plan.

3. This far greater business risk is apparent from the Purchaser's strategy of noticing for closure a number of profitable stores and reserving for possible assumption and assignment a significant proportion of the remaining leases with short remaining terms. This is in stark contrast to the Debtors' strategy of renegotiating various leases with the Simon Landlords and assuming such leases to ensure they kept profitable stores and a big enough store footprint to prudently drive e-commerce traffic and profitability as well. That is why, in the shadow of the sale negotiations with the Purchaser, the Debtors and the Simon Landlords executed the Master Agreement discussed herein, pursuant to which the Debtors and the Simon Landlords would modify various of their leases and assume them as modified. The Purchaser's about face from the Master Agreement in favor of a far different, and worse, store lease portfolio, places the business at far greater risk than anyone contemplated at the time of the sale.

4. The Bankruptcy Code expressly protects the Simon Landlords from shouldering such business risk. Specifically, the Bankruptcy Code requires an assignee to provide landlords with adequate assurance that it has the financial and operational capability to continue to perform under leases it designates for assumption and assignment. For landlords of shopping center leases, which the Simon Landlords' leases are, an assignee must satisfy a higher burden: it must demonstrate that its financial condition and operating performance is "similar to the financial condition and operating performance of the debtor . . . as of the time the debtor became the lessee under the lease." 11 U.S.C. § 365(b)(3)(A).

5. These protections are particularly critical where, as here, the acquirer is a newly-formed entity and is wholly owned by a parent company—Sycamore Partners Management, L.P. ("Sycamore")—that has repeatedly bankrupted retailers it acquired to the detriment of their

creditors,³ and whose managing members' actions are currently at the center of fiduciary duty and fraudulent conveyance litigation surrounding, among other things, Sycamore's failed investment in Nine West. *See In re Nine West LBO Secs. Litig.*, 2020 WL 7090277, at *2–4. Based on public filings, Sycamore has agreed to bankrupt another one of its retailers, Belk, Inc.⁴ And another of its retail investments, The Talbots, Inc., appears headed towards a restructuring.⁵ Against this backdrop, the recent decision by the Purchaser to close 160 of 226 stores leased from the Simon Landlords—stores that the Debtors intended as recently as November to keep—gives rise to significant concerns regarding the Purchaser's financial and operational ability to satisfy their statutory and contractual commitments.

6. Here, neither the Purchaser nor Sycamore has provided any evidence to satisfy the general standard for adequate assurance under section 365, let alone the far more stringent one under section 365(b)(3)(A) of the Bankruptcy Code applicable to shopping center leases. To the contrary, on information and belief, and based on the Purchaser's announced store closures to date, the Purchaser and Sycamore intend to operate the business by seeking to close a large number of profitable stores and assume many leases with shorter durations (including leases under which the Debtors are holdover tenants), the closure of which would surely follow in due

³ See e.g., *In re Nine West LBO Secs. Litig.*, __ F. Supp. 3d __, 2020 WL 7090277 (S.D.N.Y. Dec. 4, 2020) (discussing Sycamore's and its principals' role in bankrupting Nine West through a transaction detrimental to the health of Nine West's business, facts central to the resulting litigation); *In re Aéropostale, Inc.*, 555 B.R. 369 (Bankr. S.D.N.Y. 2016) (discussing the role of Sycamore, and its employees and affiliates, at the heart of the debtors' equitable subordination claims against them).

⁴ See *Form 8-K of Belk, Inc.* (Dec. 3, 2015) (announcing the entry of a merger where Sycamore became the equity sponsor of Belk); *Summary of Plan of Reorganization, Information Regarding Key Dates, and Certain Other Matters*, PRIME CLERK (Jan. 26, 2021) (announcing Belk, Inc.'s entry into a restructuring support agreement and expected imminent bankruptcy), available at <https://cases.primeclerk.com/belkballots>.

⁵ See *Form 8-K of The Talbots, Inc.* (Aug. 2, 2012) (announcing the entry of a merger where Sycamore became the equity sponsor of Talbots); *Talbots Lenders Coalesce with Advisors*, DEBTWIRE (Feb. 1, 2021) (announcing that lenders to Talbots are organizing in light of near-term debt maturities and Talbots' ongoing commercial distress in the retail space).

course. These maneuvers imperil the business and its brands, causing the Purchaser to bear no resemblance to the tenant the Simon Landlords contracted with at lease-inception. It is on that basis alone that the Court cannot confirm the Plan to the extent it provides for the assignment to the Purchaser of leases with the Simon Landlords.

RELEVANT BACKGROUND

7. On July 23, 2020 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. As of the Petition Date, the Simon Landlords were the owners, or the managing agents for the owners, of certain shopping centers in which the Debtors lease retail store space pursuant to 417 unexpired leases. Subsequently, the Debtors rejected 191 of those leases,⁶ leaving 226 leases (the “Leases”) outstanding, which are identified on **Exhibit A** attached hereto. The Debtors operated the Leases under their LOFT, Ann Taylor, Catherine’s and Lane Bryant brands.

9. On August 27, 2020, the Court entered an *Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases, and (II) Granting Related Relief* [Docket No. 458] (the “Rejection / Assumption Procedures Order”), which provides expedited procedures for the rejection, assumption, or assumption and assignment of executory contracts and unexpired leases. That same day, the Court also entered a *Final Order Granting Debtors’ Motion for Entry Of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Approving Procedures for Store Closing Sales, and*

⁶ See Docket Nos. 12, 120, 183, 237, 346, 603, 614, 917, 1086, 1296, 1502.

(III) *Granting Related Relief* [Docket No. 445] (the “Store Closing Order”), which sets forth procedures and guidelines for the Debtors to close certain stores and sell certain property located therein free and clear of all liens, claims, and encumbrances, and which establishes notice and objection procedures for the same.

10. On September 29, 2020, the Debtors filed the Plan Supplement [Docket No. 719] to their *Amended Joint Chapter 11 Plan of Reorganization of Ascena Retail Group, Inc. and Its Debtor Affiliates*, filed on September 17, 2020 [Docket No. 601], which, among other things, included a list of Leases to be assumed pursuant to the Plan, and the proposed cure amounts (the “Assumption List”) as Exhibit C thereto.⁷ On October 13, 2020, the Simon Landlords filed their *Limited Objection and Reservation of Rights of Simon Property Group, Inc. to Debtors’ Proposed Cure Amounts* [Docket No. 865] (the “Limited Objection”) to the Assumption List setting forth the associated cure costs for the Leases included on the Assumption List.

11. On November 19, 2020, the Simon Landlords and certain of the Debtor-lessees entered into that certain *Master Agreement Regarding Modification of Existing Leases* (the “Master Agreement”).⁸ Pursuant to the Master Agreement, the Debtors agreed to assume, or assume and assign, all 226 remaining Leases on modified terms, meaningfully reducing the Debtors’ rent obligations to the Simon Landlords, and establishing the foundation for the Debtors’ ability to operate as a stable, going-concern business. The Master Agreement’s effectiveness was

⁷ Given the Court’s entry of the Sale Order (as defined herein) and the Debtors’ filing of the Store Closing Notice (as defined herein), the latter of which included Leases originally included on the Assumption List, the Simon Landlords assume that the Assumption List has been superseded by the Store Closing Notice and is now moot.

⁸ While the Master Agreement was executed by the Simon Landlords and the Debtors on November 19, 2020, certain conditions precedent were not fulfilled and as a result the Master Agreement is not currently in effect. The Master Agreement was not publicly filed by the Debtors, and it contains a confidentiality provision which precludes its public filing at this time. In advance of the Confirmation Hearing (as defined herein), the Simon Landlords will work with the Debtors (and other parties from whom discovery is sought) on an appropriate form of protective order to govern the manner in which the Master Agreement and other confidential documents may be offered into evidence and referred to on the record at the Confirmation Hearing.

conditioned on either the entry of an order from the Court assuming (or assuming and assigning) the Leases (as modified by the Master Agreement), or the confirmation of a plan of reorganization providing for the assumption (or assumption and assignment) of the Leases.

12. Consistent with the entry into the Master Agreement, on November 23, 2020, the Debtors filed the *Amended Joint Chapter 11 Plan of Reorganization of Ascena Retail Group, Inc. and Its Debtor Affiliates (Technical Modifications)* [Docket No. 1189], which provided for the assumption of certain executory contracts and unexpired leases, including those to be assumed under the Master Agreement.

13. A hearing to confirm this chapter 11 plan never occurred. Rather, on November 26, 2020, just a week after entry into the Master Agreement, the Debtors filed the Sale Motion,⁹ which, among other things, sought the approval of the sale (the “Sale”) to Premium Apparel LLC (the “Purchaser”), an affiliate of Sycamore, of their remaining businesses, including Lane Bryant and the Debtors’ premium business segment including Ann Taylor, LOFT, and Lou & Grey.

14. On December 8, 2020, the Court entered the Sale Order,¹⁰ which, among other things, authorized the Debtors and the Purchaser to consummate the Sale pursuant to that certain Asset Purchase Agreement, dated as of November 26, 2020 (the “Asset Purchase”).

⁹ The “Sale Motion” means the *Debtors’ Motion for Entry of An Order (I) Approving the Assumption and Assignment of Certain Non-Real Property Contracts and Real Property Leases, (II) Approving the Sale of Premium and Lane Bryant and Certain Other Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Establishing Rejection Procedures, and (V) Granting Related Relief* [Docket No. 1212].

¹⁰ The “Sale Order” means the *Order (I) Approving the Assumption and Assignment of Certain Real Contracts and Real Property Leases, (II) Approving the Sale of Premium and Lane Bryant and Certain other Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Establishing Rejection Procedures, and (V) Granting Related Relief* [Docket No. 1295].

Agreement”), by and among Ascena Retail Group, Inc., as seller, each of the subsidiaries of the seller listed therein, and the Purchaser.

15. Pursuant to the Sale Order, the Purchaser has until February 18, 2021 at 5:00 p.m. (New York time) (the “Designation Deadline”) to designate any of the Debtors’ remaining leases for assumption and assignment to the Purchaser or one of its affiliates. (Sale Order ¶ 27). The Sale Order also provided that the Rejection / Assumption Procedures Order governs the noticing and objection procedures for the designation of such leases occurring pursuant to the Sale Order and the Asset Purchase Agreement, including for any Assumed Real Property Leases (as defined in the Asset Purchase Agreement). Under both the Sale Order and the Asset Purchase Agreement, the Purchaser or its designee is obligated to cure defaults and provide adequate assurance of future performance with respect to any Assumed Real Property Lease. (*See, e.g.*, Asset Purchase Agreement §§ 2.5(g), 7.09(h); Sale Order ¶¶ 26, 37.) Moreover, Section 2.5(b) of the Asset Purchase Agreement requires that the Purchaser designate real property leases “for not less than 900 stores” as Assumed Real Property Leases (as defined in the Sale Order) on or before the Designation Deadline. At the Sale hearing, this commitment by the Purchaser to continue operating at least 900 stores was touted as central to the deal, and evidence of the Purchaser’s commitment to maintain the Debtors’ business as a going concern, saving thousands of jobs nationwide. *In re Ascena Retail Grp., Inc.*, et al., Hr’g Tr. at 7:15–19, 38:1–22 (Bankr. E.D. Va. Dec. 8, 2020).

16. On December 30, 2020, the Debtors filed the Plan. The Plan, as amended, includes modifications to reflect the consummation of the Sale, provided that the Sale closes on or before the Effective Date.¹¹ Article V.B. of the Plan provides that if the Sale is consummated

¹¹ If the Sale is not consummated before the Effective Date, then the Plan may be consummated in accordance with its original, pre-Sale provisions. Specifically, Article V.A. of the Plan provides for the treatment of executory

before the Effective Date, all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected are deemed rejected unless they are the subject of a pending assumption motion. The hearing regarding confirmation of the Plan is scheduled for February 25, 2021 at 1:00 p.m. (New York time) (the “Confirmation Hearing”).

17. On January 25, 2021, the Debtors filed a *Notice of Filing of Additional Store Closing List* [Docket No. 1540], which was subsequently amended [Docket Nos. 1570 & 1591] (the “Store Closing Notice”), pursuant to the Store Closing Order, which provided for the closure of 160 of the stores subject to the Leases with the Simon Landlords (the “Noticed Leases”). On February 3, 2021, the Debtors filed a *Notice of Rejection of Certain Executory Contracts and/or Unexpired Leases* [Docket No. 1597] (the “Rejection Notice”), which proposed the rejection of 10 of the Noticed Leases. The Store Closing Notice was a significant departure from the Master Agreement negotiated less than three months prior, which promised to retain *all* of the 226 stores, and close none. Although the Store Closing Notice is silent as to the ultimate treatment of the remaining 66 store Leases (the “Remaining Leases”), nearly half of them have either already expired (and are thus not capable of assumption or assumption and assignment) or will expire within the next twelve months. With no assurance they will be renewed, additional store closures are likely. On information and belief, the strategy reflected in this store closure plan is not unique to the Simon Landlords: the Simon Landlords understand that, in the Purchaser’s negotiations with other significant landlords, the Purchaser is similarly focusing on keeping leases with similarly short durations.

contracts and unexpired leases in the event the Sale is not consummated before the Effective Date of the Plan in which case unexpired leases not previously assumed, assumed and assigned, or rejected are deemed assumed by the Reorganized Debtors.

18. To date, other than the Rejection Notice, no assumption or rejection motions or notices have been filed as to a majority of the Leases, and none of the Remaining Leases. However, in view of the Store Closing Notice and the Rejection Notice, it clearly stands to reason that the Purchaser does not intend to designate the Noticed Leases for assumption and assignment to the Purchaser or its designee, and the Noticed Leases will likely be rejected. To the extent the Purchaser seeks to take by assignment any of the Remaining Leases that have not expired, the Debtor and the Purchaser must demonstrate adequate assurance of the Purchaser's (or its designee's) ability to perform. Neither the Debtors nor the Purchaser has offered any evidence to satisfy this burden, and the Simon Landlords believe it cannot in the light of the stores it seeks to close and the short remaining terms on many of the unexpired Remaining Leases.¹²

19. Given the consequences of the Sale and the Store Closing Notice for the Debtors' business and the Purchaser's ability to perform its obligations under the Remaining Leases, the Simon Landlords file this Objection (i) because neither the Debtors nor the Purchaser have carried their burden to provide adequate assurance of future performance, and (ii) to preserve their rights to receive proper treatment under the Bankruptcy Code with respect to the Leases.

OBJECTION

20. The Debtors must demonstrate by a preponderance of the evidence that the Plan satisfies section 1129(a) of the Bankruptcy Code. *See In re Mohammad*, 596 B.R. 34, 39 (Bankr. E.D. Va. 2019) (plan proponent has burden of persuasion by a preponderance of the evidence); *In re Smith*, 58 B.R. 652, 654 (Bankr. W.D. Va. 1985), *aff'd sub nom. In re Architectural Design, Inc.*, 59 B.R. 1019 (W.D. Va. 1986). As discussed herein, the Debtors have

¹² Concurrently with filing of this Objection, the Simon Landlords have sought discovery regarding the issues raised herein.

failed to meet this burden because they have not provided *any* evidence of the Purchaser's or Sycamore's financial condition and operating performance, let alone their similarity to the Debtors' financial condition and operating performance at Lease-inception.

A. The Plan Must Satisfy All Applicable Provisions of the Bankruptcy Code pursuant to Section 1129(a)(1), including Applicable Provisions under Section 365.

21. Pursuant to section 1129(a)(1) of the Bankruptcy Code, a plan must comply with all of the applicable provisions of the Bankruptcy Code. This provision also encompasses the requirements of section 1123 of the Bankruptcy Code governing the contents of the plan. *See* S. REP. NO. 95-989, at 126 (1978); H.R. REP. NO. 95-595, at 412 (1977); *see also Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648-49 (2d Cir. 1988). Section 1123(b)(2) of the Bankruptcy Code states that “a plan may—subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section.” 11 U.S.C. § 1123(b)(2).

22. A plan that seeks to assume, assume and assign, or reject an executory contract or unexpired lease must satisfy the requirements of section 365 of the Bankruptcy Code. As with plan confirmation, the Debtors also bear the ultimate burden of persuasion under section 365. *See In re S. Galeski Optical Co.*, 1997 WL 33807884, at *3 (Bankr. E.D. Va. Aug. 28, 1997) (“[T]he Debtor has the ultimate burden of persuasion that all requirements for assumption have been met.”); *In re Rachels Indus., Inc.*, 109 B.R. 797, 802 (Bankr. W.D. Tenn. 1990); *see also Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985).

23. Under section 365(d)(4) of the Bankruptcy Code, a debtor must assume or reject an unexpired lease of nonresidential real property by no later than the entry of an order confirming a plan. *See* 11 U.S.C. § 365(d)(4). To assume and assign an unexpired lease of nonresidential real property, sections 365(b) and 365(f) are read together to require that a debtor

must provide “adequate assurance of future performance by the assignee of such” lease and likewise provide for the cure, including payment of any cure amounts, of any defaults under such lease. *See* 11 U.S.C. §§ 365(b)(1), (f)(2).

24. Moreover, if the lease to be assumed and assigned is a lease of real property in a “shopping center,” the debtor must satisfy the heightened adequate assurance requirements of section 365(b)(3). Section 365(b)(3) provides that, with respect to such a lease, a debtor or assignee, as the case may be, must provide adequate assurance:

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

11 U.S.C. § 365(b)(3)(A)–(D).

25. As noted above, Article V of the Plan addresses the treatment of executory contracts and unexpired leases, including any Leases that may be Assumed Real Property Leases under the Asset Purchase Agreement. However, as discussed herein, neither the Debtors nor the Purchaser has provided any evidence to support assumption and assignment of any of the Remaining Leases, let alone evidence to carry the heightened burden applicable under section 365(b)(3).

B. The Debtors Have Demonstrated No Evidence of Adequate Assurance of Future Performance for Any of the Leases.

26. Given the Debtors' filing of the Store Closing Notice and the Rejection Notice, coupled with the abandonment of the Master Agreement, it is apparent that the Purchaser does not intend to designate the Noticed Leases for assumption and assignment, that the Debtors will file a notice to reject them, and that the Purchaser may designate at least a portion of the Remaining Leases for assumption and assignment. If the Debtors do so, the Debtors have not provided any evidence to demonstrate adequate assurance of future performance for any such Remaining Leases.

27. Each of the Leases is a lease of "real property in a shopping center" as set forth in section 365(b)(3) of the Bankruptcy Code. *See In re Trak Auto Corp.*, 367 F.3d 237, 242 (4th Cir. 2004) (discussing the applicability of section 365(b)(3) to shopping center leases); *In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086–88 (3d Cir. 1990) (discussing the multi-factor test for determining whether a lease is a "shopping center" lease; *see also In re Toys "R" Us Prop. Co. I, LLC*, 598 B.R. 233, 239–41 (Bankr. E.D. Va. 2019) (applying the *Joshua Slocum* test to a proposed assumption and assignment of a shopping center lease); *In re Sun TV & Appliances, Inc.*, 234 B.R. 356, 360–70 (Bankr. D. Del. 1999) (same). As such, section 365(b)(3)(A) requires that (i) the source of consideration under the assigned lease and (ii) the financial condition and operating performance of the proposed assignee of such lease each be similar to such condition and performance of the debtor as of the time the debtor became a lessee under such lease. As the District Court for the Southern District in New York recently observed, the purpose of this heightened standard is to "assure the landlord that it would not have to endure a second bankruptcy any time soon." *In re Sears Holdings Corp. (MOAC Mall Holdings LLC v. Transform Holdco LLC)*, 613 B.R. 51, 74 (S.D.N.Y. 2020), *vacated on other grounds*, 616 B.R. 615 (S.D.N.Y. 2020).

28. The *Sears* court engaged in an in-depth analysis of the additional protections provided under section 365(b)(3) and, in that case, determined that the purchaser's provision of draft financial statements was insufficient to satisfy the more stringent requirements of section 365(b)(3). The court reasoned that mere submissions of the assignee's net worth or current financial wherewithal are insufficient to satisfy the statutory test. *Id.* at 78. Instead, the Debtors must demonstrate the Purchaser's "similar" financial condition and operating performance to the applicable Debtors at the commencement of each applicable Lease, which requires at least "proportionally comparable financial health between the assignee and/or its guarantors and the debtor as of the lease's inception." *Id.* at 75. Where, as here, the assignee is a newly-formed entity, a court may look to the strength and business experience of the assignee's owner and operator in comparison to that of the debtor at the time the debtor became the lessee. *Id.* at 75–76.

29. No evidence whatsoever has been provided to demonstrate the Purchaser's ability to satisfy this prong of section 365. Indeed, as the *Sears* court held, a mere review of the proposed assignee's financials or benefits of the assignment transaction is insufficient to sustain a finding by the Court of the requisite similarity. Instead, the Debtors, the Purchaser, and/or Sycamore must submit evidence to carry their burden, and this Court must review and find that such evidence demonstrates a clear similarity between the Purchaser now compared to the Debtors at the inception of the term under the respective Leases. *Id.* at 74–79 (noting that mere assignee-balance sheet equity in excess of \$250 million and permission under the lease for Sears to make an assignment to an assignee with equity value over of \$50 million did not demonstrate similarity, and that a court may not deviate from similarity-based standards in determining adequate assurance under section 365(b)(3)(A)).

30. When the Simon Landlords originally entered into each of the Leases with the tenants, the Debtors were an established and successful retailer, in a relatively strong and well-capitalized position, with dependable historical business performance and a business plan that provided a reasonable expectation of future financial and operational success. The same cannot be said of the Purchaser. The Purchaser is a newly-formed entity controlled by Sycamore without any financial or operating track record; it is already apparent that the Purchaser is not in any way similar to the Debtors at the inception of the Leases within the meaning of section 365(b)(3)(A).

31. The Store Closing Notice (which will result in the imminent closure of at least 160 of the Simon Landlords' leased stores) and inevitable rejection of the Noticed Leases reflects an unequivocal repudiation of the foundational assumptions and analyses underlying the Debtors' business and operational plan from just a few months ago, when it executed the Master Agreement that would have preserved all of those stores. On information and belief, the Purchaser has taken a similar approach with many unrelated shopping center landlords—*i.e.*, noticing stores for closure or leases for assumption and assignment, as the case may be, in a manner that will result in a significantly smaller number of leased stores in the near future. By repudiating the business rationale behind the Master Agreement, closing significant numbers of stores, and risking future closures by taking so many short-term leases, the Purchaser is signaling clearly that it will be in a very different and considerably weaker financial and operational position than when the Debtors first entered into the Leases.

32. The Simon Landlords do not understand why the Purchaser would pursue such a business strategy. While the Purchaser may seek to satisfy the letter of its obligation to keep at least 900 of the Debtors' leases, its actions to date are completely at odds with its spirit. Given the near certain closure of additional stores shortly after the Effective Date, the 900-store

requirement will be little more than a mirage. If the Purchaser's acquired business were to substantially downsize through the near-term termination of a significant portion of its "assumed" leases, then, on information and belief, (i) it appears clear that the Purchaser would have far worse anticipated profitability than was originally represented in the context of the Court's approval of the Sale, both through reduced in-store sales and a likely corresponding drop in e-commerce performance, and (ii) it is not at all clear how the Court could find that the Purchaser has a similar financial condition or operational performance to that of the Debtors at Lease inception.

33. Finally, to the extent Sycamore, as an owner and operator of various retail businesses, seeks to substitute its financial and operational wherewithal for the Purchaser's, that too is cold comfort and insufficient adequate assurance of future performance under existing case law. *See In re Sears*, 613 B.R. at 76 (a court may analyze the business experience of the assignee's management and owners, the financial strength and documents of the same, and other public records related thereto) (collecting cases). Over the years, Sycamore has bankrupted a number of the retailers it has either owned and operated or in which it has invested. These include, Nine West Holdings, Inc., Aéropostale, Inc., Belk, Inc. (executed restructuring agreement to file bankruptcy), and The Talbots, Inc. (appears from press reports to be headed towards a restructuring). In addition, one of Sycamore's bankrupt retail portfolio companies, Nine West, has spawned extensive litigation concerning breaches of fiduciary duty and other alleged bad acts, where many of the central inquiries relate to alleged bad acts by Sycamore's own principals. As a consequence, it can hardly be the case that Sycamore's track record provides an adequate substitute for the financial and operational wherewithal of the tenants the Simon Landlords contracted with.

34. As the *Sears* court held in determining that another assignee failed to satisfy the adequate assurance requirements of section 365(b)(3)(A), and was, in fact, "*not similar*" to the

debtors at inception, so too must this Court find that, absent any affirmative case by the Debtors, the Purchaser, and/or Sycamore to demonstrate convincingly the Purchaser's ability to satisfy the requirements of section 365 of the Bankruptcy Code, the Plan cannot be confirmed, and the Remaining Leases cannot be assumed and assigned.

RESERVATION OF RIGHTS

35. In addition to the assertions set forth above, and given that, other than the Rejection Notice, the Debtors have yet to issue a notice assuming, assuming and assigning, or rejecting any of the Leases, the Simon Landlords hereby reserve their rights to (i) modify this Objection or submit further objections pending the outcome of discovery and the proposed treatment of the Leases; (ii) submit, proffer, or adduce any evidence or testimony in support of this Objection if and when it becomes available before or at the Confirmation Hearing; (iii) oppose the assumption, assumption and assignment or rejection of any of the Leases, including any of those proposed to be rejected under the Rejection Notice.¹³ Nothing in this Objection shall constitute a waiver of any right or defense of the Simon Landlords under the Leases, the Plan, or any order of the Court.

36. Furthermore, to the extent the Debtors file a modified Assumption List or another notice or motion assuming, assuming and assigning, or rejecting any of the Leases, the Simon Landlords hereby reserve their rights to object to any proposed cure, adequate assurance of future performance, or rejection damages, as applicable, including with respect to, among other things, the applicable lessee's obligation to pay all charges under the Leases such as unbilled taxes and rent, year-end tax and percentage rent adjustments, reconciliations, and indemnification

¹³ In addition, to the extent that the Debtors intend to rely on Article V.A of the Plan to assume the Leases, the Simon Landlords hereby reserve their rights to argue that the Debtors have failed to satisfy their obligation to submit any evidence of proposed cure amounts or to demonstrate their ability to provide adequate assurance of future performance under the Leases.

obligations owed to the Simon Landlords, in each case either through the filing of a supplement to this Objection or to the Limited Objection, through another filed pleading, or at a hearing before the Court.

ASSUMPTION AND AMENDMENT AGREEMENT AND SEPARATE ORDER

37. Finally, if the Court decides to confirm the Plan and order the assumption or the assumption and assignment of any of the Leases to the Purchaser notwithstanding the assertions made in this Objection, then the Simon Landlords request that (i) the applicable assignees to the assumed and assigned Leases be required to enter into a short form assumption and amendment agreement, to ensure that such assignee will be directly obligated to the Simon Landlords and to modify the pertinent notice provisions of such Leases and (ii) any such assumption or assumption and assignment of the Leases be approved by a separate order of the Court, independent from the Court's order confirming the Plan.

38. Furthermore, in the event the Court determines to approve the assumption and assignment of any of the Leases without concurrently making a finding regarding the sufficiency of the adequate assurance of future performance by the Purchaser, then the Simon Landlords request that this Court shall make a finding as to sufficiency of such adequate assurance no later than thirty (30) days after the entry of the order confirming the Plan, notwithstanding Article V.B of the Plan permitting such finding to occur as late as "90 days after the Effective Date."

[Remainder of page intentionally left blank]

WHEREFORE, the Simon Landlords request that the Court enter an order denying confirmation of the Plan and assumption and assignment of any of the Remaining Lease, and granting such other and further relief as the Court deems just and proper.

Dated: February 3, 2021

/s/ Stephen A. Metz
Stephen A. Metz (VA Bar No. 89738)
OFFIT KURMAN, P.A.
7501 Wisconsin Avenue, Suite 1000W
Bethesda, MD 20814
Tel.: (240) 507-1723
smetz@offitkurman.com

Joyce A. Kuhns (*pro hac vice* pending)
OFFIT KURMAN, P.A.
300 East Lombard Street, Suite 2010
Baltimore, MD 21202
Tel: (410) 209-6463
jkuhns@offitkurman.com

-and-

Brian S. Hermann (*pro hac vice* pending)
William A. Clareman (*pro hac vice* pending)
Alexander Woolverton (*pro hac vice* pending)
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
Tel.: (212) 373-3000
bhermann@paulweiss.com
wclareman@paulweiss.com
awoolverton@paulweiss.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of February, 2021, I caused to be served a true and accurate copy of the foregoing pleading to be served by email on the parties on the attached list with email addresses, and all parties receiving notices in this case through the Administrative Procedures of the CM/ECF System for the United States Bankruptcy Court for the Eastern District of Virginia.

By: /s/ Stephen A. Metz
Stephen A. Metz, Esq.

Exhibit A

List of Leases by Simon to the Debtors

Count	Project #	Property	Lease	Lease End	Unit	Rentable SF	Store Closing Notice	Rejection Notice
1	7848	Allen Premium Outlets	Ann Taylor Factory Store	1/31/2021	300	7,805	N/A	
2	7848	Allen Premium Outlets	Loft Outlet	1/31/2025	240	9,514	N/A	
3	5201	Arundel Mills	Loft Outlet	1/31/2023	464	6,626	N/A	
4	7845	Aurora Farms Premium Outlets	Ann Taylor Factory Store	1/31/2022	0400B	7,180	N/A	
5	7845	Aurora Farms Premium Outlets	Loft Outlet	1/31/2022	0360A	6,000	N/A	
6	302	Battlefield Mall	Loft	1/31/2021	F19	5,430	N/A	
7	8099	Bay Park Square	Loft	1/31/2024	669	4,750	N/A	
8	7962	Calhoun Outlet Marketplace	Lane Bryant	7/31/2021	A057A	5,378	N/A	
9	7962	Calhoun Outlet Marketplace	Loft Outlet	1/31/2022	A029	12,000	N/A	
10	7883	Carolina Premium Outlets	Loft Outlet	1/31/2021	0850A	7,200	N/A	
11	7883	Carolina Premium Outlets	Ann Taylor Factory Store	1/31/2022	0010A	6,013	N/A	
12	8041	Charlotte Premium Outlets	Ann Taylor Factory Store	1/31/2025	200	6,000	N/A	
13	8041	Charlotte Premium Outlets	Loft Outlet	1/31/2025	908	6,000	N/A	
14	7849	Chicago Premium Outlets	Ann Taylor Factory Store	1/31/2020	423	7,500	N/A	
15	7924	Cincinnati Premium Outlets	Loft Outlet	1/31/2021	0102A	5,779	N/A	
16	8057	Clarksburg Premium Outlets	Ann Taylor Factory Store	1/31/2027	510	6,000	N/A	
17	8057	Clarksburg Premium Outlets	Loft Outlet	1/31/2027	544	6,391	N/A	
18	5207	Concord Mills	Loft	1/31/2022	254	6,544	N/A	
19	7963	Ellenton Premium Outlets	Ann Taylor Factory Store	1/31/2020	700	5,901	N/A	
20	7963	Ellenton Premium Outlets	Loft Outlet	1/31/2022	805A	7,680	N/A	
21	1308	Firewheel Town Center	Loft	1/31/2023	D13	6,445	N/A	
22	7856	Folsom Premium Outlets	Loft Outlet	1/31/2023	1208	6,182	N/A	
23	8038	Gloucester Premium Outlets	Loft Outlet	1/31/2026	748	6,000	N/A	
24	7967	Grove City Premium Outlets	Loft Outlet	7/31/2022	200	6,744	N/A	
25	7969	Hagerstown Premium Outlets	Loft Outlet	1/31/2025	300	5,373	N/A	
26	4812	Hamilton Town Center	Loft	1/31/2021	D09	5,800	N/A	
27	7909	Houston Premium Outlets	Ann Taylor Factory Store	1/31/2024	828	7,480	N/A	
28	7854	Indiana Premium Outlets	Loft Outlet	1/31/2021	A100A	5,550	N/A	
29	7859	Jersey Shore Premium Outlets	Loft Outlet	1/31/2024	793	6,484	N/A	
30	7860	Johnson Creek Premium Outlets	Ann Taylor Factory Store	1/31/2023	C040	5,800	N/A	
31	7860	Johnson Creek Premium Outlets	Loft Outlet	1/31/2024	B155	6,300	N/A	
32	5217	Katy Mills	Loft Outlet	1/31/2022	250	6,566	N/A	
33	7926	Las Americas Premium Outlets	Ann Taylor Factory Store	1/31/2021	426	7,550	N/A	
34	7865	Leesburg Premium Outlets	Ann Taylor Factory Store	1/31/2021	210	8,957	N/A	
35	7865	Leesburg Premium Outlets	Loft Outlet	1/31/2022	0901A	4,410	N/A	
36	7867	Lighthouse Place Prem Outlets	Loft Outlet	1/31/2021	D170A	5,994	N/A	
37	7867	Lighthouse Place Prem Outlets	Lane Bryant Outlet	1/31/2023	B010	4,488	N/A	
38	7932	Merrimack Premium Outlets	Loft Outlet	1/31/2023	285	5,990	N/A	

Count	Project #	Property	Lease	Lease End	Unit	Rentable SF	Store Closing Notice	Rejection Notice
39	8063	Norfolk Premium Outlets	Loft Outlet	1/31/2029	117	5,062	N/A	
40	7871	North Georgia Premium Outlets	Ann Taylor Factory Store	1/31/2020	150	7,097	N/A	
41	7871	North Georgia Premium Outlets	Loft Outlet	1/31/2025	0600A	7,256	N/A	
42	5221	Opry Mills	Loft Outlet	1/31/2023	605	6,819	N/A	
43	7876	Philadelphia Premium Outlets	Catherine's	1/31/2022	899	8,722	N/A	
44	7876	Philadelphia Premium Outlets	Ann Taylor Factory Store	1/31/2023	299	8,031	N/A	
45	7876	Philadelphia Premium Outlets	Loft Outlet	1/31/2024	499	7,382	N/A	
46	7981	Queenstown Premium Outlets	Loft Outlet	1/31/2023	B038A	6,000	N/A	
47	7878	Round Rock Premium Outlets	Loft Outlet	1/31/2022	0401B	6,189	N/A	
48	7982	San Marcos Premium Outlets	Ann Taylor Factory Store	1/31/2021	1320	7,919	N/A	
49	7881	Seattle Premium Outlets	Ann Taylor Factory Store	1/31/2021	602	7,083	N/A	
50	8010	Silver Sands Prem Outlets II	Loft Outlet	4/30/2023	41	11,701	N/A	
51	7884	St. Augustine Premium Outlets	Lane Bryant	5/31/2020	1007	5,000	N/A	
52	4694	St. Johns Town Center (CC)	Lane Bryant	3/31/2020	B01	5,000	N/A	
53	4693	St. Johns Town Center 1	Loft	1/31/2023	P09	5,800	N/A	
54	8008	St. Louis Premium Outlets	Ann Taylor Factory Store	1/31/2024	415	6,000	N/A	
55	7913	Tampa Premium Outlets	Ann Taylor Factory Store	1/31/2026	980	6,000	N/A	
56	7913	Tampa Premium Outlets	Loft Outlet	1/31/2026	870	6,000	N/A	
57	5343	The Mills at Jersey Gardens	Loft Outlet	1/31/2019	1416	7,121	N/A	
58	5222	The Outlets at Orange	Ann Taylor Factory Store	1/31/2022	125	6,221	N/A	
59	8056	Twin Cities Premium Outlets	Loft Outlet	1/31/2025	440	5,468	N/A	
60	5054	University Park Village	Ann Taylor	1/31/2023	C406	3,980	N/A	
61	7885	Vacaville Premium Outlets	Lane Bryant	12/31/2021	0252A	4,783	N/A	
62	7887	Waterloo Premium Outlets	Loft Outlet	1/31/2021	C086A	6,400	N/A	
63	7985	Williamsburg Premium Outlets	Loft Outlet	1/31/2025	E081	6,000	N/A	
64	7889	Wrentham Village Prem Outlets	Loft Outlet	1/31/2024	240	8,961	N/A	
65	8008	St. Louis Premium Outlets	Loft Outlet	01/31/2024	136	6,000	N/A	
66	7909	Houston Premium Outlets	Loft Outlet	01/31/2024	0104	5,981	N/A	
67	5201	Arundel Mills	Ann Taylor Factory Store	1/31/2024	308A	6,242	1540	
68	145	Barton Creek Square	Loft	1/31/2021	H05A	5,796	1540	
69	302	Battlefield Mall	Lane Bryant	1/31/2021	F03A	5,500	1540	
70	7961	Birch Run Premium Outlets	Lane Bryant	1/31/2020	F400	4,432	1540	
71	7961	Birch Run Premium Outlets	Ann Taylor Factory Store	1/31/2021	F375	7,000	1540	
72	7961	Birch Run Premium Outlets	Loft Outlet	1/31/2022	V033	9,000	1540	
73	4821	Brea Mall	Ann Taylor	1/31/2021	2117	3,596	1540	
74	5240	Briarwood Mall	Ann Taylor	1/31/2021	E114	3,852	1540	
75	5240	Briarwood Mall	Loft	1/31/2022	F130A	4,856	1540	
76	344	Broadway Square	Loft	1/31/2022	J03	6,146	1540	

Count	Project #	Property	Lease	Lease End	Unit	Rentable SF	Store Closing Notice	Rejection Notice
77	4822	Burlington Mall	Ann Taylor	1/31/2027	2023	4,566	1540	
78	7846	Camarillo Premium Outlets	Ann Taylor Factory Store	1/31/2022	738	7,785	1540	
79	7846	Camarillo Premium Outlets	Loft Outlet	1/31/2025	1510	6,351	1540	
80	7847	Carlsbad Premium Outlets	Ann Taylor Factory Store	1/31/2024	C112	5,116	1540	
81	7883	Carolina Premium Outlets	Lane Bryant	1/31/2025	0500B	4,075	1540	
82	8700	Castleton Square	Lane Bryant	1/31/2020	170	5,053	1540	
83	8700	Castleton Square	Loft	1/31/2021	110A	5,978	1540	
84	7849	Chicago Premium Outlets	Loft Outlet	1/31/2025	985	5,700	1540	
85	7924	Cincinnati Premium Outlets	Lane Bryant	1/31/2021	946	5,923	1540	
86	7850	Clinton Crossing Prem Outlets	Ann Taylor Factory Store	1/31/2023	0400A	5,500	1540	
87	4696	Coconut Point	Loft	1/31/2021	P01	5,818	1540	
88	8262	Columbia Center	Loft	1/31/2021	905	5,480	1540	
89	5207	Concord Mills	Lane Bryant Outlet	3/31/2021	615A	5,001	1540	
90	552	Cordova Mall	Lane Bryant	1/31/2021	E511A	5,920	1540	
91	552	Cordova Mall	Loft	1/31/2023	E599	5,766	1540	
92	735	Dadeland Mall	Ann Taylor	1/31/2027	1610	11,563	1540	
93	5243	Del Amo Fashion Center	Lane Bryant	1/31/2026	509	6,584	1540	
94	8064	Denver Premium Outlets	Loft Outlet	1/31/2029	310	5,884	1540	
95	7853	Desert Hills Premium Outlets	Ann Taylor Factory Store	1/31/2022	500	7,360	1540	
96	7853	Desert Hills Premium Outlets	Loft Outlet	1/31/2025	1004	6,000	1540	
97	4781	Empire Mall	Lane Bryant	1/31/2022	968	6,387	1540	
98	4781	Empire Mall	Loft	1/31/2023	0209A	6,016	1540	
99	1116	Fashion Ctr at Pentagon City	Ann Taylor	1/31/2023	0F04A	4,487	1540	
100	2111	Fashion Mall at Keystone	Ann Taylor	1/31/2023	60	4,250	1540	
101	4645	Fashion Valley	Ann Taylor	1/31/2023	309	5,053	1540	
102	4645	Fashion Valley	Loft	1/31/2023	303	5,365	1540	
103	1308	Firewheel Town Center	Lane Bryant	1/31/2022	D07	7,148	1540	
104	7857	Gilroy Premium Outlets	Lane Bryant	9/30/2020	A061B	5,000	1540	
105	7857	Gilroy Premium Outlets	Loft Outlet	1/31/2021	A061A	5,000	1540	
106	7857	Gilroy Premium Outlets	Ann Taylor Factory Store	1/31/2026	C010	7,500	1540	
107	8038	Gloucester Premium Outlets	Lane Bryant	1/31/2026	920	5,101	1540	
108	5211	Grapevine Mills	Loft Outlet	12/31/2020	138A	6,510	1540	
109	5211	Grapevine Mills	Ann Taylor Factory Store	1/31/2024	221B	7,217	1540	
110	1325	Greenwood Park Mall	Loft	1/31/2021	P140	5,200	1540	
111	7967	Grove City Premium Outlets	Ann Taylor Factory Store	1/31/2022	350	7,115	1540	
112	7967	Grove City Premium Outlets	Lane Bryant	1/31/2025	605	4,992	1540	
113	7969	Hagerstown Premium Outlets	Ann Taylor Factory Store	1/31/2021	605	6,530	1540	
114	4825	Haywood Mall	Lane Bryant	8/31/2022	2031A	5,160	1540	

Count	Project #	Property	Lease	Lease End	Unit	Rentable SF	Store Closing Notice	Rejection Notice
115	7621	Houston Galleria	Ann Taylor	1/31/2027	B2661	3,850	1540	1597
116	7623	Houston Galleria IV	Loft	1/31/2024	5370	5,497	1540	1597
117	7854	Indiana Premium Outlets	Ann Taylor Factory Store	1/31/2020	B050	6,490	1540	
118	7854	Indiana Premium Outlets	Lane Bryant	1/31/2021	F070	7,100	1540	
119	1711	Ingram Park Mall	Lane Bryant	1/31/2021	0T15	7,736	1540	
120	7858	Jackson Premium Outlets	Loft Outlet	1/31/2022	0300B	7,515	1540	
121	7859	Jersey Shore Premium Outlets	Ann Taylor Factory Store	1/31/2024	842	6,471	1540	
122	7860	Johnson Creek Premium Outlets	Lane Bryant	1/31/2028	B170	4,500	1540	
123	7703	King of Prussia The Plaza	Loft	1/31/2025	2106	5,264	1540	1597
124	7703	King of Prussia The Plaza	Ann Taylor	1/31/2026	1228A	4,360	1540	1597
125	7923	Kittery Premium Outlets_KTR	Ann Taylor Factory Store	1/31/2025	P006	5,961	1540	
126	2546	La Plaza Mall	Loft	1/31/2025	0P08A	4,866	1540	
127	7926	Las Americas Premium Outlets	Loft Outlet	1/31/2022	152	6,000	1540	
128	7864	Las Vegas North Prem Outlets	Ann Taylor Factory Store	1/31/2025	1439	6,014	1540	
129	7863	Las Vegas South Prem Outlets	Lane Bryant	9/30/2021	248	4,552	1540	
130	7863	Las Vegas South Prem Outlets	Loft Outlet	1/31/2022	308	5,248	1540	
131	7863	Las Vegas South Prem Outlets	Ann Taylor Factory Store	1/31/2024	10	8,000	1540	
132	7973	Lee Premium Outlets	Ann Taylor Factory Store	1/31/2024	D170	7,573	1540	
133	7973	Lee Premium Outlets	Loft Outlet	1/31/2028	C146	6,213	1540	
134	7711	Lehigh Valley Mall	Loft	1/31/2021	1220	5,629	1540	
135	4827	Lenox Square	Loft	1/31/2023	4053A	6,266	1540	
136	7867	Lighthouse Place Prem Outlets	Ann Taylor Factory Store	1/31/2022	M010A	7,200	1540	
137	4828	Livingston Mall	Loft Outlet	1/31/2022	1018	6,014	1540	
138	4666	Menlo Park Mall	Lane Bryant	1/31/2021	2020	8,437	1540	
139	7932	Merrimack Premium Outlets	Ann Taylor Factory Store	1/31/2023	209	5,771	1540	
140	7710	Montgomery Mall	Loft	1/31/2024	1195	5,336	1540	
141	7710	Montgomery Mall	Ann Taylor	1/31/2025	2123A	4,000	1540	
142	2810	Newport Centre	Loft	1/31/2024	0A10C	5,079	1540	
143	4923	Northshore Mall	Ann Taylor	1/31/2026	E161	4,297	1540	
144	4923	Northshore Mall	Loft	1/31/2026	E186	6,140	1540	
145	5218	Ontario Mills	Ann Taylor Factory Store	1/31/2022	904B	5,832	1540	
146	5221	Opry Mills	Lane Bryant Outlet	3/31/2022	320	4,473	1540	
147	5221	Opry Mills	Ann Taylor Factory Store	1/31/2023	635	6,843	1540	
148	4670	Orland Square	Lane Bryant	1/31/2022	0F12A	6,000	1540	
149	4670	Orland Square	Loft	1/31/2024	0D11A	4,853	1540	
150	7976	Orlando Intl Prem Outlets	Lane Bryant	1/31/2022	1B12	5,042	1540	
151	7976	Orlando Intl Prem Outlets	Ann Taylor Factory Store	1/31/2023	2C01	8,000	1540	
152	7976	Orlando Intl Prem Outlets	Loft Outlet	1/31/2024	1A15	6,480	1540	

Count	Project #	Property	Lease	Lease End	Unit	Rentable SF	Store Closing Notice	Rejection Notice
153	7879	Orlando Vineland Prem Outlets	Ann Taylor Factory Store	1/31/2022	745	8,526	1540	
154	7879	Orlando Vineland Prem Outlets	Loft Outlet	1/31/2024	1601	6,000	1540	
155	7872	Osage Beach Outlet Marketplace	Loft Outlet	1/31/2022	BB1B	5,608	1540	
156	7707	Oxford Valley Mall	Loft	1/31/2021	2061A	5,660	1540	
157	7603	Penn Square Mall	Loft	1/31/2021	1028	5,329	1540	
158	7604	Pheasant Lane Mall	Ann Taylor	1/31/2020	E249	3,087	1540	
159	8003	Phoenix Premium Outlets	Lane Bryant	4/30/2023	910	4,800	1540	
160	4764	Pier Park	Loft	1/31/2020	K140	5,668	1540	
161	7979	Pleasant Prairie Prem Outlets	Ann Taylor Factory Store	1/31/2020	B041	6,502	1540	
162	7979	Pleasant Prairie Prem Outlets	Loft Outlet	1/31/2022	A001	9,000	1540	
163	7979	Pleasant Prairie Prem Outlets	Lane Bryant	7/31/2023	D071A	4,155	1540	
164	5227	Potomac Mills	Ann Taylor Factory Store	1/31/2024	825	8,404	1540	
165	7705	Quaker Bridge Mall	Loft	1/31/2023	1224A	5,156	1540	
166	7705	Quaker Bridge Mall	Ann Taylor	1/31/2024	1054A	4,122	1540	
167	7908	Rio Grande Valley Prem Outlet	Loft Outlet	1/31/2021	836	6,750	1540	
168	7908	Rio Grande Valley Prem Outlet	Ann Taylor Factory Store	1/31/2022	525	7,808	1540	
169	4836	Roosevelt Field	Ann Taylor	1/31/2022	2064E	3,435	1540	
170	4836	Roosevelt Field	Loft	1/31/2022	2066G	5,956	1540	
171	3107	Ross Park Mall	Ann Taylor	1/31/2022	0D10A	4,305	1540	
172	3107	Ross Park Mall	Loft	1/31/2023	0K08A	5,354	1540	
173	7878	Round Rock Premium Outlets	Ann Taylor Factory Store	1/31/2022	1201	8,132	1540	
174	7957	San Francisco Premium Outlets	Ann Taylor Factory Store	1/31/2026	1280	6,004	1540	
175	7957	San Francisco Premium Outlets	Loft Outlet	1/31/2026	1374	5,506	1540	
176	5229	Sawgrass Mills	Ann Taylor Factory Store	1/31/2023	1027A	8,926	1540	
177	7881	Seattle Premium Outlets	Loft Outlet	1/31/2022	0528A	5,123	1540	
178	7881	Seattle Premium Outlets	Lane Bryant	6/30/2022	815	4,000	1540	
179	3632	Smith Haven Mall	Loft	1/31/2023	S03	5,337	1540	
180	4674	South Hills Village	Loft	9/30/2022	1250A	5,413	1540	
181	4838	South Shore Plaza	Loft	1/31/2021	1210A	5,000	1540	
182	4838	South Shore Plaza	Lane Bryant	1/31/2023	2023	10,594	1540	
183	5259	Southdale Center	Loft	1/31/2022	1150	4,836	1540	
184	7605	SouthPark	Ann Taylor	1/31/2024	E11B	4,351	1540	1597
185	7605	SouthPark	Loft	1/31/2025	P16	5,640	1540	1597
186	7884	St. Augustine Premium Outlets	Ann Taylor Factory Store	1/31/2022	405	6,958	1540	
187	508	St. Charles Towne Center	Lane Bryant	1/31/2021	B05	5,002	1540	
188	4693	St. Johns Town Center 1	Ann Taylor	1/31/2023	R11A	4,000	1540	
189	4692	Stanford Shopping Center	Ann Taylor	1/31/2022	101	3,616	1540	
190	5261	Stoneridge Shopping Center	Lane Bryant	1/31/2021	F225	5,229	1540	

Count	Project #	Property	Lease	Lease End	Unit	Rentable SF	Store Closing Notice	Rejection Notice
191	5261	Stoneridge Shopping Center	Ann Taylor	4/30/2021	E215B	5,200	1540	
192	8087	The Avenues	Loft	2/29/2020	1420A	5,550	1540	
193	7852	The Crossings Premium Outlets	Ann Taylor Factory Store	1/31/2022	H01A	6,941	1540	
194	7852	The Crossings Premium Outlets	Loft Outlet	1/31/2024	C10	6,540	1540	
195	4735	The Domain	Loft	1/31/2021	K03	5,557	1540	
196	5343	The Mills at Jersey Gardens	Ann Taylor Factory Store	1/31/2020	1022	6,627	1540	
197	5222	The Outlets at Orange	Loft	1/31/2023	508	5,619	1540	
198	7601	The Shops at Chestnut Hill	Ann Taylor	1/31/2022	S219B	3,959	1540	
199	7601	The Shops at Chestnut Hill	Loft	1/31/2023	N229	4,991	1540	
200	9180	The Shops at Mission Viejo	Loft	1/31/2021	012C	5,387	1540	
201	4830	The Shops at Nanuet	Loft	1/31/2024	6107	5,076	1540	
202	5257	The Shops at Riverside	Ann Taylor	1/31/2020	129A	3,637	1540	
203	4676	The Westchester	Ann Taylor	1/31/2022	2860B	4,053	1540	1597
204	4676	The Westchester	Loft	1/31/2022	3050	4,710	1540	1597
205	4839	Town Center at Boca Raton	Ann Taylor	1/31/2022	1148B	4,034	1540	1597
206	4839	Town Center at Boca Raton	Loft	1/31/2024	1041	5,193	1540	1597
207	4840	Town Center at Cobb	Lane Bryant	3/31/2024	249A	4,500	1540	
208	2105	Towne East Square	Lane Bryant	2/28/2021	0H12A	5,592	1540	
209	8056	Twin Cities Premium Outlets	Ann Taylor Factory Store	1/31/2025	1015	5,500	1540	
210	9690	Tyrone Square	Lane Bryant	1/31/2020	260A	5,095	1540	
211	9690	Tyrone Square	Loft	1/31/2021	625	6,064	1540	
212	9710	University Park Mall	Lane Bryant and Cacique	1/31/2021	1010	7,000	1540	
213	9710	University Park Mall	Loft	6/30/2021	1120	5,000	1540	
214	7885	Vacaville Premium Outlets	Loft Outlet	1/31/2022	121DB	6,250	1540	
215	4855	Village Shops-Mall of Georgia	Loft	1/31/2021	VC03	6,066	1540	
216	4841	Walt Whitman Shops	Loft	6/30/2022	1014	4,840	1540	
217	4536	White Oaks Mall	Loft	1/31/2023	0D09A	4,915	1540	
218	7986	Williamsburg Prem Outlets MZL	Lane Bryant	8/31/2023	F175	5,000	1540	
219	7985	Williamsburg Premium Outlets	Ann Taylor Factory Store	1/31/2021	A016A	6,930	1540	
220	8055	Woodburn Premium Outlets	Loft Outlet	1/31/2023	404	6,440	1540	
221	8055	Woodburn Premium Outlets	Ann Taylor Factory Store	1/31/2024	800	6,329	1540	
222	7888	Woodbury Common Prem Outlets	Ann Taylor Factory Store	1/31/2019	113	6,951	1540	
223	7888	Woodbury Common Prem Outlets	Loft Outlet	1/31/2023	0280A	7,562	1540	
224	7607	Woodland Hills Mall	Loft	1/31/2020	0165A	5,630	1540	
225	7889	Wrentham Village Prem Outlets	Lane Bryant	1/31/2022	470	4,500	1540	
226	7889	Wrentham Village Prem Outlets	Ann Taylor Factory Store	1/31/2029	0294A	7,789	1540	